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BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

In the Matter of )  
 )  
Amendment of Part 1 of the )  
Commission's Rules -- )  
Competitive Bidding Proceeding )


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Federal Communications Commission  
Office of Secretary  
WT Docket No. 97-82

To: The Commission

COMMENTS OF THE  
AMERICAN MOBILE TELECOMMUNICATIONS ASSOCIATION, INC.

Respectfully submitted,

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## **SUMMARY**

The American Mobile Telecommunications Association, Inc. ("AMTA" or "Association") generally endorses the FCC's proposal to amend Subpart Q of Part 1 of the Commission's rules governing competitive bidding. Clarifying the auction rules and, where appropriate, unifying the rules across the various radio services will result in better informed bidders and a more efficient auction process. Accordingly AMTA approves of the Commission's proposals to require mandatory electronic filing, the creation of a central database where licensee and bidder ownership information can be stored, the extension of pre-grant construction rules to all auction winners, and the modification of the anti-collusion rule to permit entities to invest in other applicants if the original applicant withdraws from the auction. AMTA also favors offering defaulted licenses to the second highest bidder as well as permitting applicants to base their gross revenues either on audited or unaudited financial statements, and, either on a fiscal or calendar year basis.

AMTA cautions the Commission that, in its efforts to streamline the auction rules, it not lose sight of the particular needs of the entities, particularly small businesses, comprising the various radio services. Accordingly, AMTA opposes offering higher bidding credits in lieu of installment payments, or the suggestion of increasing the down payment amounts and/or requiring bidders to increase their upfront payment during the course of the auction. Additionally, AMTA does not believe that the Commission should conduct credit checks to determine the credit worthiness of bidders eligible for installment payments. Moreover, AMTA does not approve of the schedule of bidding credits suggested by the Commission because AMTA believes that the bidding credit provisions must remain flexible in order to accommodate

the various sized entities that could be participating in the auction process.

AMTA strongly recommends that the instant rule making proceeding include the adoption of a rule which specifically addresses the Commission's authority to institute a freeze suspending the acceptance of applications pending adoption of revised licensing provisions, and establishes a limited time period, no more than six months, during which an application freeze can be in effect.

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**COMMENTS OF THE  
AMERICAN MOBILE TELECOMMUNICATIONS ASSOCIATION, INC.**

1. The American Mobile Telecommunications Association, Inc. ("AMTA" or "Association"), pursuant to Section 1.415 of the Federal Communications Commission ("FCC" or "Commission") Rules and Regulations, respectfully submits its Comments in the above-entitled proceeding.<sup>1/</sup> The Association generally supports the Commission's proposals to amend its rules governing the competitive bidding process, and takes this opportunity to discuss more fully certain aspects of the Commission's proposals.

**I. INTRODUCTION**

2. AMTA is a nationwide, non-profit trade association dedicated to the interests of the specialized wireless communications industry.<sup>2/</sup> The Association's members include trunked and conventional 800 MHz and 900 MHz SMR operators, licensees of wide-area SMR systems,

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<sup>1/</sup> *Order, Memorandum Opinion and Order and Notice of Proposed Rule Making*, WT Docket No. 97-82, FCC 97-60 (released Feb. 28, 1997) (hereafter "*Order*" and "*Notice*" respectively).

<sup>2/</sup> These entities had been classified as private carriers prior to the 1993 amendments to the Communications Act. See Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI § 6002 (b), 107 Stat. 312, 392 ("*Budget Act*").

and commercial licensees in the 220 MHz band. These members provide commercial wireless services throughout the country. The systems they operate are classified by the FCC as Private Mobile Radio Service ("PMRS") or Commercial Mobile Radio Service ("CMRS"), the latter being considered a sub-category of common carrier service.<sup>3/</sup> Because these members will be affected by the competitive bidding procedures proposed in the *Notice*, AMTA has a significant interest in the outcome of this proceeding.

## II. BACKGROUND

3. In 1994, with the advent of the use of competitive bidding to award FCC licenses, the Commission adopted a general framework to determine the type of licenses that may be subject to auctions and the various auction designs and procedures which the Commission could choose from on a service-by-service basis.<sup>4/</sup> The Commission's general auction rules are found in Subpart Q of Part 1 of its rules ("Subpart Q").<sup>5/</sup> With Subpart Q as its framework, the Commission has adopted individual, service specific auction rules for the ten auctions it has held to date.

4. The Commission believes now that the general auction rules found in Subpart Q can be amended in order to "simplify our regulations and eliminate unnecessary rules wherever possible, increase the efficiency of the competitive bidding process, and provide more specific

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<sup>3/</sup> See *Second Report and Order*, GN Docket No. 93-252, 9 FCC Rcd 1418 (1994) ("CMRS 2nd R&O"), Erratum, 9 FCC Rcd 2156 (1994); *Third Report and Order*, 9 FCC Rcd 7988 (1994), Erratum, 9 FCC Rcd \_\_\_\_ (1994).

<sup>4/</sup> *Second Report and Order*, 9 FCC Rcd 2348 (1994), recon., *Second Memorandum Opinion and Order*, 9 FCC Rcd 7245 (1994).

<sup>5/</sup> 47 C.F.R. §§ 1.2101 *et seq.*

guidance to auction participants while also giving them more flexibility."<sup>6/</sup> Based on its auction experience, the Commission believes that the creation of a set of auction rules and procedures that could be applied across all services would simplify and expedite the auction process. *Notice* at ¶ 4.

5. Accordingly, the Commission's *Order* amends its rules to: (1) clarify the auction designs and methods of submitting bids from which the Commission will generally choose; (2) establish quarterly auctions for "defaulted licenses or unsold licenses that were previously auctioned and for which there are mutually exclusive applications, services with a small number of licenses and services in which licenses are expected to have low values." (*Id.* at ¶ 7); (3) include on the FCC Form 175 a certification that the applicant is not in default of any payment for Commission licenses and that it is not delinquent on any non-tax debt owed to any federal agency; (4) require upfront and down payments to be made by wire transfer only; (5) codify its current requirement that in order to take advantage of installment payment plans, winning bidders must execute promissory and security agreements; (6) extend the period for final payments or second down payments from five to ten business days from the date the Commission issues its Public Notice announcing that it is ready to award the licenses; and (7) clarify that the Chief, Wireless Telecommunications Bureau, has delegated authority to implement the rules regarding auction procedures.

6. In addition to the amendments summarized above, the Commission has identified other rules and procedures in Subpart Q that could be amended to accomplish its objectives and has requested further comments in its *Notice* on a variety of proposed changes.

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<sup>6/</sup> *Order* at ¶ 2.



### III. DISCUSSION

#### A. Applicability of General Competitive Bidding Rules

7. The Commission proposes to apply the amended auction rules adopted in this proceeding to all future auctions so as to minimize the need to adopt service specific rules. However, the Commission seeks comment on whether the rules adopted in this proceeding should apply to all existing service-specific competitive bidding rules, thereby superseding any existing auction rules which could apply to future auctions. *Notice* at ¶ 18.

8. Although AMTA generally supports amending the auction provisions of Subpart Q to clarify the Commission's policies and to better inform potential bidders of the auction rules, it does not believe that the amended rules adopted in this proceeding should supersede existing auction regulations. There has been an unprecedented degree of change and regulatory uncertainty in recent years, as the FCC has implemented fundamental changes in its licensing structures. The changes have been profound for a number of wireless services, particularly the 800 MHz and 220 MHz services. At some point, parties need to know, and are entitled to know, what the regulatory ground rules will be, and to have a level of confidence that business plans can be developed in reliance on them. For example, the Commission established competitive bidding rules for the "upper 10 MHz block" of 800 MHz SMR spectrum over a year ago.<sup>71</sup> The SMR industry has had an opportunity to review and become familiar with these rules; changing them now, not because they are fundamentally flawed, but because all regulations can be "fine-tuned" would be contrary to the interests of those intending to

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<sup>71</sup> *First Report and Order, Eighth Report and Order, and Second Further Notice of Proposed Rule Making*, PR Docket 93-144, 11 FCC Rcd 1463 (1995) (¶¶ 9-142 "*First R&O*"; ¶¶ 143-256 "*Eighth R&O*"; ¶¶ 257-403 "*Second FNPRM*").

participate in the auction of this spectrum. Certainty is more important than attempting to reach some platonic concept of regulatory perfection. Similarly, the 220 MHz industry has encountered extraordinary delays in achieving regulatory certainty. It should not be delayed further while the FCC considers what rules should be adopted in this proceeding. Accordingly, the amendments adopted in this proceeding should apply only to auctions for which rules have not been adopted or proposed.

**B. Rules Governing Designated Entities**

**1. Small Business Standards; Definition of Gross Revenues**

9. AMTA supports the Commission's proposal to continue to determine on a service-by-service basis the appropriate small business standard or tiered standards to be used, as well as its proposal to define small business in terms of gross revenues. Notice at ¶ 20. The Association agrees with the FCC's determination that it is appropriate to define "small business" for purposes of each auction in light of the financial and other obligations likely to be incurred by a successful bidder. For example, in light of the significantly different capital requirements associated with implementing a 250 kHz system at 900 MHz versus a 30 MHz PCS system, the Commission properly adopted distinct small business definitions which were appropriate for those particular services.

10. In defining gross revenues, AMTA supports permitting applicants to evidence their gross revenues based on unaudited financial statements and to allow the use of unaudited financial statements without having to requesting a waiver. It is a market reality that many small businesses do not have audited financial statements, and that the size and scope of their businesses do not justify the time and expense incurred by maintaining audited records. This

was demonstrated in the 900 MHz SMR auction when many small businesses requested waivers of the FCC rule requiring that gross revenues be evidenced by audited financial statements. To require businesses to have their records audited for the sole purpose of competing in the Commission's auctions is both unnecessary and a burdensome requirement. Additionally, the Commission should allow applicants to determine their gross revenues either on a fiscal or calendar years basis. Since there appears to be no overriding benefit of requiring one method over the other, applicants should be permitted to use either.

11. Moreover, to require that such businesses seek a waiver of the Commission's rules to use unaudited financial statements creates an extra step for small businesses to assume, and an additional review process for the Commission to undertake. The Commission's intent in requiring audited financial statements presumably is to insure that the financial statements submitted are accurate and truthful, not to impose an expensive and burdensome obligation on small businesses. Applicants are already required to certify in their FCC Form 175 and FCC Form 600 applications that the information they are submitting is accurate. To the extent that they do not comply with that obligation, whether in reporting their financial or other relevant information, the FCC has authority to address such misrepresentations.<sup>8/</sup>

2. Attribution of Gross Revenues of Investors and Affiliates

12. In determining whether an applicant qualifies for bidding credits and installment payments as a small business, the Commission's rules provide that the gross revenues of

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<sup>8/</sup> See FCC Rule Section 1.913(d) which provides that "Willful false statements made [on an application] are punishable by fine and imprisonment, U.S. Code Title 8 section 1001, and by appropriate administrative sanctions, including revocation of station license pursuant to section 312(a)(1) of the Communications Act of 1934, as amended."

affiliates and certain investors in the applicant are considered in addition to the applicant's own gross revenues. The Commission notes that the definition of "affiliate" and "attributable" investors have not been defined uniformly throughout the services. Accordingly, the Commission proposes to use a single definition of a "controlling interest threshold" whereby the gross revenues of the controlling principals of an applicant and their affiliates would be included as part of the applicant's gross revenue calculations. *Notice* at ¶ 28. The Commission further proposes to define control in terms of *de facto* and *de jure* control. In addition, the FCC questions whether it should amend its definition of affiliates to conform to the recently revised Small Business Administrations definition. *Id.*

13. AMTA generally believes that the FCC's proposals in this regard are reasonable. However, in the Association's opinion, the details of the rules adopted may prove less significant than ensuring that the definitions are simple, understandable, and enforceable in order to maintain the integrity of the small business provisions.

### 3. Installment Payments

14. The Commission seeks comments on "ways that [it] could refine [its] installment payment plans to streamline without reducing their benefits to small businesses." *Notice* at ¶ 34. Specifically, the Commission questions whether bidders should be screened to determine their credit worthiness, and under what standard, whether higher bidding credits should be offered instead of installment payments, whether larger down payments should be required, and whether it should require that bidders increase their upfront payments during the auction if their cumulative bids surpass their upfront payments by a certain multiple. *Notice* at ¶ 35.

15. It appears that the suggestions made in the *Notice* are aimed at preventing payment defaults rather than streamlining the FCC's installment payment plans. AMTA recognizes the Commission's concern regarding defaults, particularly in light of the issues that have arisen in the IVDS and PCS C-block auctions. AMTA appreciates that defaults skew the auction process to the disadvantage of other participants. However, this has not been a problem in every auction. For example, although 60 small business bidders won 26% of the 900 MHz SMR licenses, to the best of the Association's knowledge, there have been no defaults arising out of the 900 MHz SMR auction. AMTA suggests that the Commission's approach to amending the installment payment plan should not be based on the worst case scenario; instead, the Commission should balance its concerns against the significant public interest in providing meaningful opportunities for small businesses to participate in the auction process.

16. Thus AMTA firmly believes that the Commission should not, and may not be qualified to, conduct credit checks on small businesses. The FCC is "in the business" of distributing licenses; it is not a financial institution equipped to evaluate the credit worthiness of an applicant.<sup>9/</sup> AMTA also opposes any suggestion to offer higher bidding credits in lieu of installment payments. Installment payment provisions are critical to the ability of small business to participate in FCC auctions as mandated by Congress. They enable small businesses to finance and pay their bid amounts. As the Commission has recognized previously "allowing installment payments reduces the amount of private financing needed by prospective small

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<sup>9/</sup> In suggesting that the Commission might examine transferring its obligation to collect payment from auction winners from the FCC to others, Chairman Hundt stated "the new businesses should have the ability to negotiate with bankers just as companies do everyday. But the FCC is ill-suited to act as a banker." *Chairman Hundt Releases 1997 FCC Agenda*, News Release Notice, December 26, 1996.

business licensees and therefore mitigates the effect of limited access to capital by small businesses".<sup>10/</sup>

17. The FCC's suggestion of increasing the down payment amounts could also prove detrimental to the small business participation. While the Commission properly is concerned about ensuring that licensees are capable of attracting sufficient capital to deploy their systems, that concern must be balanced against the needs of small businesses to conserve their financial resources for just that purpose. Monies devoted to meeting down payment obligations will not be available for infrastructure purchases or other operational needs. Down payments should be sufficient to represent a financial commitment and capability on the licensee's part without jeopardizing its ability to implement the system.

18. In addition, requiring bidders to increase their upfront payments during the auction if their cumulative bids exceed their upfront payment by a certain multiple will require small businesses to have additional funds on hand during the entire auction and before they are deemed winning bidders. Implementing this proposal could be cumbersome and, potentially, slow the auction process. The FCC would need to provide some time period, presumably at least 24 hours, in which a bidder could access the necessary funds and make its additional payment. It is unclear whether the bidder would be permitted to continue to make bids during that time period and, if not, whether the auction would be halted while funds were received. This result would seemingly be contrary to other FCC initiatives to the auction process.

19. Again, AMTA appreciates that preventing defaults is in the interest of maintaining the integrity of the auctions. However, this effort must be reconciled with the even more

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<sup>10/</sup> *Eighth R&O*, 11 FCC Rcd 1463, ¶ 248 (1995).

important public policy goal of promoting small business participation in the future provision of telecommunications services.<sup>11/</sup>

20. The Commission also proposes to include in its auction rules a schedule of installment payment plans, thereby establishing an easy reference of the installment payments provisions afforded bidders. The Commission further proposes to codify its existing policy "by specifying that the interest rate for installment payments will be determined by taking the coupon rate of interest offered in the most in the most recent Treasury auction proceeding the close of the Commission's auction." *Notice* at ¶ 37. AMTA supports the Commission's efforts to provide specific information in its rules regarding installment payment provisions. Providing bidders with as much information as possible as early in the auction process as possible will enhance their ability to formulate and execute business plans. The overall auction process benefits from having well informed bidders. AMTA, therefore, supports establishing the interest rate for installment payment plans at the time the Commission issues its Public Notice announcing the start of an auction, as suggested in the *Notice* (¶ 38), as well as a schedule of consistent installment payment provisions.

#### 4. Bidding Credits

21. The Commission also proposes to define the levels of bidding credits and suggests establishing a schedule delineating the level of bidding credits available. *Notice* at ¶ 40. AMTA agrees that these guidelines may be valuable to prospective bidders, but cautions the FCC against adopting rules that will limit the agency's discretion in tailoring these provisions to the individual

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<sup>11/</sup> AMTA suggests that in the event of a choice between higher down payments, or, supplemented upfront payments during the course of the auction, the latter would be preferable.

characteristics of various services. As noted previously, different services require different levels of capital investment for infrastructure deployment and other obligations. The bidding credits adopted for a particular service should reflect those economic issues as well as the need to ensure that only qualified entities secure licenses. Retaining the FCC's flexibility to determine the appropriate bidding credit, therefore, is crucial in promoting meaningful participation of small businesses in the auction process.

**C. Application Issues**

1. Electronic Filing

22. AMTA support the Commission's proposed amendment of Sections 1.2105(a) and 1.2107(c) to require that applicants submit their FCC Forms 175 (short-form applications) and FCC Forms 600 (long-form applications) *via* electronic filing.

2. Ownership Disclosure Requirements and Filings

23. Recognizing that the various service rules include different ownership disclosure requirements, the Commission proposes to adopt the requirements currently in effect for broadband PCS as the standard that would be applicable to all services. *Notice* at ¶ 51. The Commission further proposes to adopt a standard reporting requirement for applicants claiming designated entity status similar to that in the 900 MHz SMR rules. *Id.* at ¶ 52. Additionally the Commission recognizes that certain entities may compete in more than one auction, and therefore would be required to file the same ownership information multiple times. Accordingly, the Commission proposes creating a central database in which it would store licensee and bidder data which an entity could update as needed. AMTA supports creating a central database whereby applicants filing in a subsequent auction would be able to either update their ownership



information, as needed, or certify that there have been no changes. Being able to rely on the database information will eliminate duplicative filings and thus conserve the resources of both applicants and the Commission.

**D. Payment Issues**

1. Refund of Upfront Payment

24. AMTA strongly supports the FCC proposal to continue its practice of refunding the upfront payments of bidders who withdraw from an auction prior to its close. AMTA agrees that it is in the public interest to release the funds of those bidders who decide to drop out of the auction. If the Commission waits to release the funds until the close of an auction, it could potentially tie up funds for months, which could be especially difficult for small businesses.

2. Down Payments

25. In reviewing its down payment rules and procedures, the Commission proposes to continue to determine the amount of the initial down payments on a service-by-service basis. However, instead of its current practice of determining on a case-by-case basis whether to grant a waiver for late filed payments, the Commission proposes to establish a period of time, no longer than ten business days, in which bidders can make late final or second down payments, including a late fee, without being considered in default. *Id.* at ¶ 61. The FCC seeks comment on the appropriate late fee. It also seeks comment on whether it should require all bidders to make their second down payment regardless of whether a petition to deny has been filed against the license.

26. AMTA supports the Commission's proposal to permit late payments without the need to request a waiver, but opposes requiring a bidder to make a second down payment if a

petition to deny has been filed against its license. For the same reason that the Commission should refund a bidder's upfront payment if the bidder withdraws from the auction, the Commission should not encumber a bidder's funds if its license has been challenged. Providing that the down payment would be held in an escrow account in such cases does not alter the fact that a licensee's funds could be held up for months, perhaps longer, before a final resolution is made.

### 3. Installment Payments

27. In the Notice, the Commission also presents proposals to amend its installment payment procedures. The Commission seeks comment on whether to provide for a late payment fee for any installment payment that is overdue as provided for in the broadband F block auction rules; whether to amend Rule Section 1.2110(e)(4)(ii) governing grace periods; and whether to apply the default payment provisions of Section 1.2104(g) to licensees who default on installment payments. *Notice* at ¶¶ 71-78. The Association supports amending the installment payment provisions to impose a reasonable late fee on licensees who default on their installment payment obligations similar to the late fees imposed recently in the broadband F block auction.

## **E. Competitive Bidding Design, Procedures, and Timing Issues**

### 1. "Real Time" Bidding

28. The Commission seeks comment on how auctions can be conducted more quickly. It suggests that it could modify its current simultaneous multiple round auction rules to provide for a fixed "real time" bidding period (permitting bidding on a continuous basis within a combined bid submission/bid withdrawal period) followed by a closed bidding period during

which valid bids could be submitted to ensure that a bidder's activity level is met. *Notice* at ¶¶ 80-83.

29. As an initial matter, AMTA would note that the benefits of fast-paced auctions, while important, must be balanced against other public interest considerations, particularly when small, unexperienced participants are involved. A number of future auctions, such as those in the 800 MHz and 220 MHz bands, are expected to attract a significant number of novice bidders. "Real time" bidding not only is confusing, it also condenses the bidding process and does not allow time for such parties to acclimate themselves to complex bidding procedures. Additionally, AMTA urges the Commission to recognize that an accelerated auction process can be particularly burdensome for small businesses. Many of the likely participants in the 800 MHz and 220 MHz auctions are very small operators with limited personnel resources. One of the reasons SMR systems remain so cost-effective is that they are not human resource-intensive. They do not have teams of employees or sufficient resources to retain outside parties whose activities can be devoted to the auctions.

30. Adopting "real time" bidding could place small businesses at a disadvantage because they typically lack both the human resources to devote to a concentrated bidding period, and the financial resources to stay on-line during the entire bidding period.<sup>12/</sup> Moreover, "real time" bidding may not allow sufficient time for bids to be reviewed and approved before being submitted, a common practice among even small business bidders and one the FCC should encourage to minimize the likelihood of erroneous or withdrawn bids. Accordingly, AMTA

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<sup>12/</sup> "Real time" bidding effectively requires electronic, as opposed to telephonic, bidding and requires a bidder to stay on-line continuously throughout the bidding period. At \$2.30 a minute, this could be an extremely costly proposal.

opposes the adoption of "real time" bidding, and recommends that the FCC conduct one auction round per day for at least the first two weeks of the 800 MHz and 220 MHz auctions. From the perspective of small businesses, it would be preferable for the FCC to accelerate moving to higher auction stages than to schedule more than a single round a day.

## 2. Minimum Opening Bids

31. The FCC further proposes to amend its rules to allow it to establish minimum opening bids instead of suggested minimum opening bids. *Notice* at ¶ 86. The Association believes that establishing minimum bids is contrary to the nature of auctions and to the current FCC marketplace oriented philosophy. One of the fundamental attributes of an auction is that the fair market value of the property is determined by what a willing bidder is prepared to pay for it. Leaving that determination to the market is fully consistent with the FCC's own assessment that it is not qualified to determine the value of spectrum and with the agency's repeated affirmations that it is entirely unconcerned with the amount of revenue generated by its auctions. In AMTA's opinion, establishing minimum bids would undermine both the FCC's assertions regarding the purpose of using competitive bidding to award licenses and the proper working of the competitive marketplace.

## 3. Reauction Versus Offering To Second Highest Bidder

32. Currently, FCC Rule Section 1.2109(b) provides that, in the event of a default after the auction closes, the Commission may either reauction the defaulted license or offer the license to the next highest bidder. The Commission seeks comment on whether to retain its existing rule or to modify it by specifying the circumstances in which the Commission would

have the discretion to offer a license to the second highest bidder. The Commission offers several alternative proposals. *Notice* at ¶ 97.

33. AMTA supports offering defaulted licenses to the second highest bidder, as a matter of course. That bidder should be given the right of first refusal, but not the obligation, to acquire the license at its highest bid amount. This provision should constitute a right rather than an obligation since the party may have pursued alternative auction strategies with the result that it is no longer interested in acquiring the defaulted license. However, since defaults skew the auction process, the second highest bidder should not be further disadvantaged by having to participate in another auction for a license it would have won, if not for a subsequently defaulted higher bid.

#### **F. Rules Prohibiting Collusion**

34. AMTA supports the Commission's proposal to modify its anti-collusion rule to allow an entity to invest in a different applicant if the original applicant withdraws from the auction, and the entity certifies that it did not communicate with the new applicant prior to the time the original applicant withdrew. *Notice* at ¶ 101. Permitting a willing investor to continue to finance an applicant is in the public interest because it helps ensure that available funds remain in the auction for those who need them.

#### **G. Pre-Grant Construction**

35. In its *Notice*, the Commission proposes to provide for pre-grant construction as set forth in FCC Rule Section 22.143 to all auction winners. *Notice* at ¶ 104. Under its proposal, auction winners would be allowed to construct their systems, at their own risk, and subject to service-related restrictions such as antenna restrictions and environmental

requirements, once the Commission issued its Public Notice announcing the acceptance for filing of the long-form application, and regardless of whether petitions to deny had been filed against the license.

36. AMTA supports the Commission's proposal. Permitting pre-grant construction affords the auction winner an opportunity to implement its business plan expeditiously based on its own assessment of the legal sufficiency of any petition to deny. This approach may not only accelerate the point at which the winner is able to secure a return on its investment, but could have the further salutary effect of deterring the submission of frivolous, anti-competitive petitions to deny.

**H. Time Limitation on the Effective Dates of an FCC Freeze Suspending the Acceptance of Applications.**

37. Although not specifically addressed in the *Notice*, it is AMTA's opinion that the Commission's authority to implement a freeze, suspending the acceptance of applications while it organizes and formulates proposed rules for the disposition of spectrum by auction, should be examined as part of this rule making proceeding, and that specific rules limiting the time period during which the Commission can impose a freeze should be adopted.

38. Typically, when the Commission makes an initial determination to adopt new rules, including competitive bidding, in a pre-existing, encumbered service, it imposes a freeze on the filing of applications for new stations or modifications in order to preserve the existing landscape. Indeed, the imposition of a licensing freeze has become a routine procedure in the development of auction rules for established services. While they typically are characterized by the FCC as "interim" measures with only minimal likely impact on business activities, the reality has proven to be otherwise.

39. Freezes have a substantial adverse impact on the ability of all businesses, whether large or small, to conduct their operations and provide service to the public.<sup>13/</sup> They make doing business in the present difficult and business planning impossible. These adverse effects are exacerbated further when the freeze lasts for months, even years, which has been the case more often than not. The FCC's freeze on the 800 SMR MHz band is a prime, but regrettably not the only, example. The Commission imposed a freeze on the acceptance of 800 SMR MHz applications effective August 9, 1994.<sup>14/</sup> It subsequently imposed a freeze on new applications for inter-category sharing of frequencies in the 806-821/851-866 band effective April 5, 1995<sup>15/</sup> and a freeze on new applications on General Category frequencies effective October 4, 1995.<sup>16/</sup> The 800 MHz SMR industry has been at a standstill for more than two years. System growth has been inhibited during the emergence of the intensely competitive CMRS environment.

40. In light of the very serious, negative, and anti-competitive ramifications associated with a licensing freeze, AMTA urges the FCC to avoid adopting them whenever possible. Moreover, when the Commission determines that it must impose a freeze in anticipation of the adoption of substantive regulatory changes, it should be obligated to lift the freeze and/or finalize the associated rule making within six months and to initiate the auction process within three months thereafter.

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<sup>13/</sup> See, e.g. PR Docket No. 93-144 (800 MHz Proceeding); PR Docket No. 89-553 (900 MHz Proceeding); PP Docket. No. 93-552 (220 MHz Proceeding); WT Docket No. 96-18 (Paging Proceeding).

<sup>14/</sup> *Third Report and Order*, 9 FCC Rcd 7988 (1994)

<sup>15/</sup> *Order*, 10 FCC Rcd 7350 (1995).

<sup>16/</sup> *Order*, 10 FCC Rcd 13190 (1995).

41. The agency has proven capable of proceeding with remarkable alacrity when required to do so by statutory mandate.<sup>17/</sup> It should be prepared to proceed with comparable speed when the ongoing businesses of its constituents are at issue. Conforming to a six-month deadline will require the Commission to consider carefully in which situations a licensing freeze is essential to its rule making process. It also will help ensure that the FCC has given sufficient attention to a proposal which incorporates a licensing freeze in advance of a Notice of Proposed Rule Making. If it has failed to do so, or if the record raises issues that cannot be resolved within that time frame, the freeze should lift while the Commission considers alternative approaches.

### III. CONCLUSION

42. Generally, AMTA supports the objectives of the Commission as articulated in the instant *Notice*. The interests of streamlining and "fine tuning" the Commission's auction rules will create better informed bidders and a more efficient auction process. Nonetheless, AMTA urges the Commission to be cautious that the goal of efficiency not overshadow the more important objective of creating workable rules that make sense for the specific radio services, and entities, subject to auction.

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<sup>17/</sup> *Report and Order*, GN Docket No. 96-228, FCC 97-50, 11 FCC Rcd \_\_ (released Feb. 19, 1997); *First Report and Order*, CC Docket No. 96-98, 11 FCC Rcd 15499 (1996); *See also Wireless Telecommunications Bureau Progress Report: One Year After the Implementation of the Telecommunications Act of 1996* (released January 8, 1997).



## CERTIFICATE OF SERVICE

I, Vicki J. Ritter, a secretary in the law office of Lukas, McGowan, Nace & Gutierrez, hereby certify that I have, on this 27th day of March, 1997, directed to be hand carried, a copy of the foregoing Comments to the following:

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Washington, D.C. 20554

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Federal Communications Commission  
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Commissioner Rachelle B. Chong  
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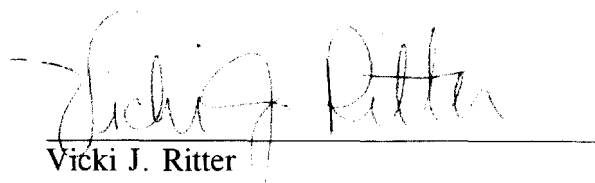
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